IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11954 of 2007
Date of decision 6. 8 .2007

M/s Atma Tube Products Ltd. .. petitioner

Versus

Debt Recovery Appellate Tribunal and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Anand Chhibbar, Advocate for the petitioner

M.M.Kumar, J.

This writ petition filed under Article 226 of the Constitution prays for quashing order dated 27.7.2007 (Annexure P.26) passed by the Debt Recovery Appellate Tribunal, New Delhi (for brevity 'the DRAT') on a Misc. Application in Misc. Appeal No.13 of 2003. The Misc. appeal No.13 of 2003 is directed against the order dated 6.1.2003 (Annexure P.16) passed by the Debt Recovery Tribunal (for brevity 'the DRT'). The main appeal is listed for arguments on 13.8.2007 which emerges from the order dated 6.1.2003. The afore-mentioned order reflects that the counsel for the petitioner had sought adjournment from DRT on the ground that the OTS proposal made by the petitioner who had filed original application on 23.12.2002 was pending. It was noticed that no amount was deposited alongwith the proposal to show the bona-fide of the petitioner. The DRT noticing that it was an old case and has been repeatedly adjourned and the alleged proposal for OTS was not a ground for adjournment, yet it granted adjournment to settle the matter under OTS by observing that no further time was to be granted for arguments unless the petitioner establishes its bona-fide by depositing 25 percent of the amount of OTS as per Reserve

Bank of India guide-lines. The amount was to be quantified by the petitioner as per the RBI guide-lines. The deposit was to be made with the secured creditors- financial institutions.

One of the secured creditors IDBI issued a notice dated 27.4.2007 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Securitization Act') to the petitioner. Against the afore-mentioned notice Misc. Application No.146 of 2007 was filed for declaring the notice as nonest and to set it aside. A further prayer was made that IDBI be restrained from taking any further proceedings under Section 13(4) of the Securitization Act. It is appropriate to notice that the original application No. 920 of 2001 was filed before the DRT by the three financial institutions namely IFCI, IDBI and ICICI ltd. against the petitioner for recovery of Rs. 6 crores and odd. IFCI is the lead financial institution authorised and empowered to initiate and file recovery proceedings against the petitioner. All the afore-mentioned financial institutions have advanced a loan of Rs. 5 Crores to the petitioner somewhere in 1988. A charge was also created on 14.2.1991 when the mortgage deed was executed. The first installment became due on 15.4.1990 for payment of which the petitioner committed default. When the order dated 6.1.2003 was passed directing the petitioner to deposit 25 % of the amount of OTS as per RBI guide-lines which was subject matter of challenge in Misc. Appeal No.13 of 2003 which is posted for hearing on 13.8.2007. It was during the pendency of the appeal that notice under Section 13(2) of the Securitization Act was issued by the IDBI which was questioned by moving the Misc. Application. The Tribunal had stayed the notice dated 14.8.2003 under Section 13(2) of the Securitization

Act vide its order dated 10.10.2003 issued by the IFCI on the condition that the petitioner shall deposit a sum of Rs. 5 lakhs. The afore-mentioned stay order was passed by the Tribunal before insertion of Section 13(3A) of the Securitization Act and the judgement of the Hon'ble Supreme Court in the case of Transcore v. Union of India and another AIR 2007 SC 712. The law has undergone radical change after the stay order dated 10.10.2003 was passed. Earlier there was no bar on the borrower to prefer an application to the DRT at the stage of issuance of notice under Section 13(2) of the Securitization Act whereas by virtue of insertion of Section 13 (3A) that bar has been created. It is only after notice under Section 13(4) of the Securitization Act is issued that Section 17 of the Act will come into play and the petitioner could approach the DRAT. The DRAT after noticing the afore-mentioned position in law dismissed the application of the petitioner holding that it was wholly premature. It rejected the argument that it was barred by the provisions of Section 36 of the Securitization Act and Article 62 of the Limitation Act, 1963.

We have heard the learned counsel for the petitioner at a considerable length who has argued that the provisions of Section 36 of the Securitization Act provide for a complete bar on the secured creditor to make a claim of time barred debt. According to the learned counsel a provision has been made by adopting the provision of Limitation Act, 1963 for adjudging as to whether the debt is time barred. In that regard learned counsel has placed reliance on Article 62 of the Limitation Act, 1963 which provides for a period of 12 years to enforce payment of money secured by mortgage or otherwise. According to the learned counsel the time runs from the date when the money becomes due. According to him in the present

case it would be 15.4.1990. Learned counsel has placed reliance on a judgement in the case of Indumati Pattanaik v. Chief Manager, Bank of India IV(2005) BC357 (DB)(Orissa). He has also submitted that the petitioner is without any remedy and after issuance of notice under Section 13(4) of the Securitization Act the possession of his property would be taken over. He has also submitted that once notice by one of the member of the Consortium has been issued then no notice by any other member would be competent by virtue of Section 2(zd) read with Section 13 of the Securitization Act.

We have thoughtfully considered the submissions made by the learned counsel for the petitioner and express our inability to accept the same. Firstly the main appeal of the petitioner is pending consideration of the DRAT for 13.8.2007 when merits of the controversy are likely to be considered. Moreover, this Court under Article 226 shall not in the present case undertake the exercise to determine whether the debt is barred by Limitation Act or the Recovery of the debt has been claimed within the period of limitation. It is well settled that the question of limitation is a mixed question of fact and law. It is not possible for us to give a positive conclusion that the debt is barred by time because there may be acknowledgment on the part of the petitioner or it may be a running account which may sound into different results. The DRAT may be better equipped to decide these questions. We further find that there is no equity in favour of the petitioner as even the Ist instalment which was due on 15.4.1990 has not been paid. It is well settled that whosoever comes to equity is expected to do equity himself. Therefore, the equitable jurisdiction of this Court under Article 226 of the Constitution would not be available.

It may be noticed that we were not inclined to make any observation on any of the issues in view of the pendency of the appeal before the DRAT and the pendency of the original application before the DRT. However, on the insistence of the counsel for the petitioner, the afore-mentioned observation has been made. These observations should not be taken as final and neither the DRAT nor DRT feel influenced by it as we have not recorded any conclusion on the merits of the controversy. Therefore, the writ petition is wholly mis-conceived and the same is consequently dismissed.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

6.8.2007
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